

ORIGINAL

cc: Judge O
Rafeedie

BARRY D. EDWARDS 4509
 1431 Alencastre Street
 Honolulu, Hawaii 96816
 Telephone (808) 737-2100
 Fax (808) 732-4499
 e-mail: barrydedwards@gmail.com
 Attorney for Defendant
 FRED M. ORTIZ

FILED IN THE
 UNITED STATES DISTRICT COURT
 DISTRICT OF HAWAII

MAR 21 2006
 at 2 o'clock and 23 min M
 SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 02-00133 ER (04)
)	
Plaintiff,)	DEFENDANT FRED M. ORTIZ'S
)	MOTION FOR RELEASE ON BAIL
)	PENDING APPEAL; APPENDIX A;
vs.)	NOTICE OF MOTION; CERTIFICATE OF
)	SERVICE
)	
FRED M. ORTIZ, <i>ET AL.</i>)	
)	Judge: Hon. Edward Rafeedie
)	Date:
Defendants.)	Time:
)	
)	

**DEFENDANT FRED M. ORTIZ'S MOTION
 FOR RELEASE ON BAIL PENDING APPEAL**

Defendant, FRED M. ORTIZ, by his appointed counsel, moves for release on bail pending resolution of his appeal to the Ninth Circuit Court of Appeals.

This motion is made pursuant to Rule 9, Fed. Rules App. Proc. and its Advisory Committee Notes (1967 Adoption, Subsection (b)), Rule 38, Fed. Rules Crim. Proc., and 18 U.S.C. 3143(b).

As grounds for this motion, defendant states:

1. Mr. Ortiz has appealed his conviction and sentence in this case to the Ninth Circuit Court of Appeals under case number C. A. No. 05-10723.
2. Mr. Ortiz is currently incarcerated at FCI Herlong SCP, having self-surrendered in

accordance with the order of the District Court on October 11, 2005.

3. Mr. Ortiz is not likely to flee or to pose a danger to the safety of any person or the community if released. He fully complied with all pretrial and post-conviction conditions of release for over three years before beginning to serve his 36-month sentence by surrender to FCI Herlong SCP in accordance with this Court's orders. If released from detention pending his appeal, Mr. Ortiz will again reside with his mother in California and abide by all conditions of his release.


4. The pending appeal is not for the purpose of delay, and raises substantial questions of law likely to result in reversal of his conviction and an order for a new trial. A "substantial question" under 18 U.S.C. 3143(b) is one that is "fairly debatable." *United States v. Handy*, 761 F.2d 1279, 1283 (9th Cir. 1985). The arguments and authorities set forth in Mr. Ortiz' opening brief on appeal, Appendix A, fully support his release from detention pending resolution of the appeal.

We request that Pretrial Services prepare a report of appropriate conditions of release for the Court's consideration in deciding this motion.

We also request such other evidentiary proceedings as the Court deems necessary for resolution of this motion, particularly as to the lack of flight risk and danger to any person or the community findings described in 18 U.S.C. 3143(b)(1)(A).

Wherefore, Mr. Ortiz requests release on bail pending the resolution of his appeal on such conditions as the Court may deem necessary and appropriate.

DATED: Honolulu, Hawaii, March 21, 2006.


BARRY D. EDWARDS
Attorney for Defendant
FRED M. ORTIZ